

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for Reinstatement  
of:**

**Naim Safiullah Katiby**

**Physician's and Surgeon's  
Certificate No. A 50826**

**Case No. 800-2021-076840**

**Respondent.**

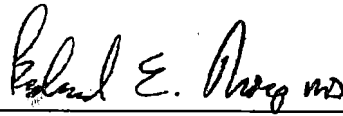
**DECISION**

**The attached Proposed Decision is hereby adopted as the Decision  
and Order of the Medical Board of California, Department of Consumer  
Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on July 20, 2022.**

**IT IS SO ORDERED June 20, 2022.**

**MEDICAL BOARD OF CALIFORNIA**



**Richard E. Thorp, M.D., Chair  
Panel B**

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for Reinstatement of:**

**NAIM SAFIULLAH KATIBY, Petitioner.**

**Agency Case No. 800-2021-076840**

**OAH No. 2022030073**

**PROPOSED DECISION**

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on April 6, 2022, by videoconference.

Deputy Attorney General Kendra Rivas represented the Office of the Attorney General, Department of Justice.

Respondent Naim Safiullah Katiby represented himself.

The record closed and the matter was submitted for decision on April 6, 2022.

**FACTUAL FINDINGS**

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 50826 to petitioner Naim Safiullah Katiby on June 9, 1992.

## **Disciplinary History**

### **2006 ACCUSATION AND 2007–2010 BOARD PROBATION**

2. On March 2, 2006, the Board issued an accusation against petitioner alleging unprofessional conduct, gross negligence, and repeated negligent acts, in connection with petitioner's care of one patient.

3. Petitioner signed a stipulated settlement, which was adopted by the Board in an Order effective September 26, 2007. Petitioner's certificate was revoked, the revocation was stayed, and it was placed on probation for 35 months, with conditions including completing an education course, completing the Physician Assessment and Clinical Education (PACE) Program, and having a practice monitor.

4. The Board issued an Order on November 5, 2010, declaring that petitioner had completed his probation and that his certificate was fully restored, effective August 26, 2010.

### **2012 ACCUSATION AND 2013 SURRENDER OF CERTIFICATE**

5. On February 14, 2012, the Board filed an accusation against petitioner. The Board filed a first amended accusation on August 10, 2012, alleging that petitioner issued prescriptions for other than a legitimate medical purpose; knowingly presented false or fraudulent insurance claims for payment; acted dishonestly; made false representations in documentation; prescribed medications without an appropriate prior examination; and had a substantially related criminal conviction.

6. Petitioner signed a stipulated surrender of his certificate, which was adopted by the Board in a Decision effective July 3, 2013. As part of the stipulated surrender, petitioner admitted the truth of all allegations and charges against him.

7. The facts underlying the first amended accusation are as follows. On multiple occasions from November 2008 to January 2009, while petitioner was on Board probation, he treated two people who presented as patients but were undercover agents for the Drug Enforcement Agency (DEA) using fictitious names.

The male agent told petitioner he had no medical insurance and had been in a vehicle accident in which he sustained a shoulder injury, and asked petitioner to treat both that injury and an unrelated previous knee injury under the accident insurance claim. Petitioner agreed, and prescribed Vicodin upon request without a full examination. The agent later returned to see petitioner accompanied by a female agent who he introduced as his girlfriend, saying she had been in the vehicle accident with him, but had not been injured. Petitioner agreed to treat the female agent for a prior back injury under the insurance claim for the accident. He also prescribed Vicodin to both agents and Flexeril to the male agent, after performing a very brief physical examination of the female agent. In a subsequent visit, the male agent returned to petitioner's medical office alone, and asked for more Vicodin for both agents, which petitioner prescribed. The female agent returned to petitioner's office on a later date, petitioner confirmed their arrangement to treat her for an unrelated injury under the traffic accident claim, and he again prescribed her Vicodin, as well as Flexeril. Petitioner submitted multiple fraudulent claims to the vehicle insurance company in connection with these visits.

Criminal proceedings against petitioner were initiated in February 2009. Petitioner was subsequently convicted, in the Superior Court of California, County of Alameda, on a plea of no contest, of a felony violation of Penal Code section 549 (filing false insurance claims). Petitioner was given a suspended sentence and placed

on probation for five years. In 2015, the court granted petitioner's motion to reduce the charge to a misdemeanor and dismiss the complaint.

### **FIRST PETITION FOR REINSTATEMENT**

8. On December 15, 2016, petitioner filed a petition for reinstatement of his surrendered certificate. An administrative law judge (ALJ) conducted a hearing on August 28, 2018, and issued a proposed decision denying the petition, which the Board adopted in a Decision effective November 15, 2018. The Decision is herein incorporated by reference. Pertinent points are summarized below.

Petitioner was born and raised in Afghanistan, and completed medical school and received a medical license there. He worked as a doctor in Afghanistan during the Soviet-Afghan War, and survived several bombings. Petitioner moved to the United States in 1986, subsequently completed a residency in family practice, and was licensed to practice medicine in Maryland in 1991 and California in 1992.

In 2000, petitioner found himself addicted to opioids. He sought treatment, completed the Board's diversion program in 2003, and has been sober since then.

In 2009, petitioner sought treatment for post-traumatic stress disorder (PTSD) and depression, remaining under the care of a psychiatrist until 2014. That psychiatrist reevaluated petitioner in 2018 and found his symptoms had largely resolved. However, the ALJ noted that the psychiatrist's report did not discuss petitioner's misconduct, why he acted in such a manner, whether his poor judgment and fraudulent behavior was related to PTSD and/or depression, or discuss whether such behavior might recur.

The ALJ also found that the letters of support offered by petitioner (from two medical colleagues and his wife) did not offer insight into his behavior or rehabilitation

since the time of his misconduct. Petitioner presented letters regarding his volunteer activities that were dated prior to his license surrender and were given little weight by the ALJ. Petitioner volunteered in the Bay Area Afghan community and Rotary Club, and traveled to Afghanistan to practice medicine. Petitioner also completed continuing medical education courses.

The ALJ found that in discussing the misconduct that led to his conviction and the surrender of his license, petitioner failed to fully accept responsibility and repeatedly minimized his actions, describing his crime as “not billing properly.” He also failed to acknowledge that he prescribed dangerous drugs to patients without a legitimate medical purpose or examination.

The ALJ concluded that petitioner had failed to present sufficient evidence of rehabilitation, noting particularly his failure to take full responsibility for his conduct or to address his poor decision-making and lax approach to prescribing opioids.

## **SECOND PETITION FOR REINSTATEMENT**

9. Petitioner signed a second petition for reinstatement on January 31, 2021, which was received by the Board on April 7, 2021. A Board investigator interviewed petitioner on December 20, 2021, and also spoke with the authors of petitioner’s letters of support. This hearing followed.

### **Petitioner’s Evidence**

10. Since surrendering his medical license, petitioner has provided administrative and operational support to his wife’s beauty salon and online beauty supply business. The salon has closed due to the COVID-19 pandemic, causing financial hardship for petitioner and his wife.

11. At hearing, petitioner discussed much of the same evidence that he presented in his first petition for reinstatement.

12. Petitioner has continued his volunteer activities in the local community. Petitioner has also continued to travel periodically to Afghanistan, where he has an active medical license, to provide medical care and other volunteer services.

13. Petitioner acknowledged that he committed a crime by engaging in fraudulent billing and deviated from the standard of care in his prescription of dangerous drugs. He apologized and stated that he has tried to be a better person. However, petitioner did not discuss what led him to commit that misconduct, or demonstrate insight into the root causes of his behavior.

14. Since the time his first petition for reinstatement was denied, petitioner has sought some psychological counseling by videoconference, but said he did not find it very beneficial. He did not provide details, or explain whether he learned anything in therapy about the causes of his behavior or how to prevent its recurrence.

15. Petitioner testified that he has taken continuing medical education classes on ethics, billing, and safe prescribing of opioids. However, many of the courses he provided documentation for were taken prior to his first petition. Of the classes petitioner has taken since the denial of his first petition, only two were relevant to prescribing practices: "strategies for effective pain management" in April 2020 (3.5 hours), and "strategies for effective pain management: managing patients on opioid analgesics" in March 2021 (1.25 hours). Petitioner stated he has taken an online class about medical ethics but did not provide documentation. He stated he had read unspecified publications about ethics and billing practices, but did not provide details. Petitioner conceded he has not taken any recent classes on billing practices.

16. Petitioner submitted two letters of support.

(a) Romesh Japra, M.D., wrote a letter dated December 12, 2020. Dr. Japra is petitioner's cardiologist. He stated that he has known petitioner since 1996, and that he is aware of the criminal conviction for which petitioner surrendered his license. Dr. Japra stated that petitioner has made positive changes in his life by continuing medical education and participation in local and international charities.

(b) Najibulrahman Saifulrahman, M.D., wrote a letter dated December 11, 2020. (He also wrote a letter in support of petitioner's first petition.) He has known petitioner for over 10 years. Dr. Saifulrahman was aware of respondent's criminal conviction, as he had been working with petitioner at that time. Petitioner stated that he has seen Dr. Saifulrahman occasionally since then. In his letter, Dr. Saifulrahman praised petitioner's volunteer activities and described him as a hardworking person and compassionate physician.

17. Petitioner stated that he loves the medical profession and helping people. If reinstated, petitioner would like to work part-time in a group medical practice where he would not have any responsibility for billing. He sees this as the best way to avoid the conduct that resulted in his conviction. He also may seek a position in consulting, research, or teaching.

## **LEGAL CONCLUSIONS**

1. In a proceeding for the restoration of a license, the burden rests on the petitioner to prove that he or she is rehabilitated and entitled to have his or her license fully restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d



1392, 1398.) The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

2. Business and Professions Code section 2307, subdivision (b)(1), states that reinstatement petitions may be filed three years after an individual's license is revoked or surrendered. Petitioner's petition is timely.

3. In determining whether to grant a reinstatement petition, "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability" may be considered. (Bus. & Prof. Code, § 2307, subd. (e).)

4. Factors considered in determining whether a licensee has been rehabilitated include: the nature and gravity of the misconduct; any subsequent misconduct; the amount of time that has elapsed since the misconduct took place; evidence of rehabilitation; and for cases involving a criminal conviction, total criminal record, compliance with probation, parole, or other sanctions, and evidence of dismissal proceedings under Penal Code section 1203.4. (Cal. Code Regs., tit. 16, §§ 1360.1 & 1360.2.)

5. The primary purpose of this proceeding is to protect the public, not to punish the licensee. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) This view is consistent with the Medical Practice Act, which provides that in exercising its disciplinary authority, the Board's highest priority is the protection of the public. (Bus. & Prof. Code, § 2229, subd. (a).)

## Analysis

5. The above-described criteria have been considered to determine the outcome of petitioner's request for reinstatement. Petitioner's misconduct was very serious, although it occurred 13 years ago, and he completed criminal probation and had his conviction dismissed. Petitioner has made efforts to improve himself since surrendering his license, and is to be commended for his volunteer work. Petitioner has made some progress since his first petition for reinstatement, and now accepts responsibility for his misconduct in submitting fraudulent billing and improperly prescribing opioids. However, petitioner has not demonstrated insight into the causes of his behavior, despite attending therapy. Nor has he shown concrete steps taken to ensure he will not reoffend, other than two short classes about pain medications.

On this record, petitioner has failed to meet his burden of showing by clear and convincing evidence that he is rehabilitated to the extent that would support the reinstatement of his certificate.

## ORDER

The petition of Naim Safiullah Katiby for reinstatement of his revoked physician's and surgeon's certificate is denied.

DATE: 05/06/2022



HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings

## **Government Code Section 11521**

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.